


***CR 2012/67 - Fringe Benefits Tax: employer clients of
Instinctive Corporate Wellness who enter into
Service Agreements in respect of the Chiropractic
and Counselling Services Program***

 This cover sheet is provided for information only. It does not form part of *CR 2012/67 - Fringe Benefits Tax: employer clients of Instinctive Corporate Wellness who enter into Service Agreements in respect of the Chiropractic and Counselling Services Program*



Class Ruling

Fringe Benefits Tax: employer clients of Instinctive Corporate Wellness who enter into Service Agreements in respect of the Chiropractic and Counselling Services Program

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	8
Scheme	9
Ruling	17
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	24
Appendix 2:	
Detailed contents list	99

❶ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- subparagraph 58M(1)(c)(iv) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
- section 58P of the FBTAA; and
- subsection 136(1) of the FBTAA.

All references in this Ruling are to the FBTAA unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies is those employers who enter into Service Agreements in respect of the Chiropractic and Counselling Services Program (CCSP).

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 9 to 33 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

7. This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to:

Commonwealth Copyright Administration
Copyright Law Branch
Attorney-General's Department
National Circuit
Barton ACT 2600

or posted at: <http://www.ag.gov.au/cca>

Date of effect

8. This Ruling applies from 1 September 2011. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- the application for Class Ruling (dated 14 October 2011); and
- a draft Services Agreement (forwarded 27 February 2012).

10. The trustee for The Petersen Family Trust, trading as Instinctive Corporate Wellness (ICW), is in the business of providing chiropractic and counselling services.

11. ICW supplies various health services to employees of employers who have entered into service agreements with ICW in respect of CCSP.

12. ICW only employs for the CCSP those chiropractors (chiropractors) who are registered with the Australian Health Practitioners Regulation Agency and who adhere to the Chiropractic Board of Australia codes of conduct and guidelines.

13. Employers participating in the CCSP are charged between \$35 and \$50 (exclusive of GST) per session per employee depending on the duration of the consultation and the nature of service being provided.

14. The categories of services provided through the CCSP may comprise:

Initial Consultation

The chiropractor will meet with each employee individually to create a personalised action plan. The action plan is created after a thorough initial examination and taking an extensive history of the employee. The initial examination may also involve the taking of an x-ray.

Nutritional Counselling

The chiropractor will discuss with the employee the proper storage of food, how food is processed and the effect of certain foods on the body in regards to nutrition and general health.

Specifically, the chiropractor will discuss with the employee the absorption and digestion of foods and the importance of regulating feeding to reduce obesity and increase personal health.

Advice is also provided regarding supplemental intake to ensure the employee receives a balanced dose of vitamins and minerals as required to provide peak performance in the employee's professional and personal lives.

The advice is provided using information about the food intake and metabolism of the particular employee.

Physical Health Counselling

The chiropractor provides advice to the employees on how to ensure that the metabolic pathways within the employees' bodies are functioning at the highest levels. The chiropractor will use basic supplementing to influence biochemical pathways to promote energy production, immunity, hormonal and detoxification pathways.

The chiropractor also provides advice to the employees regarding any, or all of, the following areas: cardiovascular, hormonal, renal and endocrine. The aim of this advice is to provide the employees with balanced information on how to be in the best physical health.

The chiropractor will also monitor any clinical presentation, management and prognosis of any conditions affecting the nervous system as well as any dermatology, ophthalmology conditions or rheumatic disorders.

Weekly chiropractic adjustments are performed on the employee to help realign and strengthen the employee's body.

Psychological Counselling

The chiropractor will advise employees on stress and coping, illness and disability, pain and management, rehabilitation, eating behaviours and eating disorders, substance abuse, anxiety disorders, mood disorders, lifespan development disorders, referral procedures and community resources.

Guidance will also be provided on how to live in an environment that is not prone to infection and disease and how the employees can improve retention of information, pain control, learning and memory.

Further guidance is provided on how to have positive, effective and beneficial relationships at work and the employee's personal life. The counselling ranges from how to communicate effectively to managing relationships and best practices.

Ergonomic Counselling

The chiropractor will provide the employee with advice, based on the employee's particular workplace environment, on the best practices to prevent repetitive strain injuries. This advice involves the recommendations of the best equipment, posture, and work environment to ensure that the employee is comfortable and productive in their workspace.

Group Counselling

Monthly sessions will be provided by the chiropractors to employees at the employees' place of work. These sessions may be directed to a specific work type and the problems which have been encountered in that area. The Group Counselling service will advise safe and/or wellbeing practises the employees as a group can employ.

Alternatively, lifestyle sessions tailored to suit a group type may be offered. If a theme is identified overall resulting from weekly advice sessions then this may also be addressed as a possible topic for discussion at Group Counselling.

15. Employers participate in the CCSP with the view that the program will result in any or all of:

- improvement in employee health and respect for their bodies;
- decrease in the number of employee work related injuries and sick days;
- employees functioning and working at their peak level in regards to efficiency, communication and productivity;
- employees gaining the knowledge to further their own personal and professional life due to specific counselling for their particular situation;
- improving the culture at the business by assisting employees to get the best from themselves professionally; or
- reduction in employee stress.

16. The services made available to employees participating in the CCSP will not be part of any salary packaging arrangement and will not be provided as a reward for services rendered or to be rendered by the employee.

Note: Certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

Ruling

17. The provision of the CCSP Initial Consultation will be an exempt benefit under subparagraph 58M(1)(c)(iv) as all the requirements of the definition of 'work related counselling' in subsection 136(1) are met.

18. The provision of CCSP Nutritional Counselling will be an exempt benefit under subparagraph 58M(1)(c)(iv) as all the requirements of the definition of 'work related counselling' in subsection 136(1) are met.

19. The provision of CCSP Psychological Counselling will be an exempt benefit under subparagraph 58M(1)(c)(iv) as all the requirements of the definition of 'work-related counselling' in subsection 136(1) are met.

20. The provision of CCSP Ergonomic Counselling will be an exempt benefit under subparagraph 58M(1)(c)(iv) as all the requirements of the definition of 'work-related counselling' in subsection 136(1) are met.

21. The provision of CCSP Group Counselling will be an exempt benefit under subparagraph 58M(1)(c)(iv) as all the requirements of the definition of 'work-related counselling' in subsection 136(1) are met.

22. The provision of CCSP Physical Health Counselling will not be an exempt benefit under subparagraph 58M(1)(c)(iv) as not all of the requirements of the definition of 'work-related counselling' in subsection 136(1) are met.

23. The provision of CCSP Physical Health Counselling will be an exempt minor benefit where all the requirements of section 58P are met.

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

What type of benefits do employees participating in the CCSP receive?

24. The term 'benefit' as defined in subsection 136(1) includes, amongst other things, any right (including a right in relation to, and an interest in, real or personal property), privilege, service or facility.

25. Therefore, due to the wide ambit of what may comprise a 'benefit' for the purposes of the FBTAA, any or all of the services currently provided under the CCSP will constitute a benefit being provided by the employer to the relevant employees.

26. Section 45 states that a residual benefit is one that is not a benefit by virtue of any provision of Subdivision A of Divisions 2 to 11 inclusive of the FBTAA. Therefore, in basic terms, a residual benefit is a benefit that does not fall within one of the other more specific benefit types contained in the FBTAA.

27. It is considered that any or all of the current services being provided under CCSP do not fall within one of the other more specific benefit types contained in the FBTAA. Consequently, the benefits being provided to employees under the CCSP will be 'residual benefits' for the purposes of the FBTAA.

28. In general terms, a 'fringe benefit', leading to a liability for fringe benefits tax (FBT), is a 'benefit' provided to an employee in respect of the employee's employment that is not an 'exempt benefit'. Amongst such exempt benefits are those falling within section 58M regarding various types of 'work-related benefits' and those falling within section 58P regarding 'minor benefits'.

Do employees participating in the CCSP receive exempt benefits

29. The FBTAA specifies certain benefits will be exempt benefits. For the purpose of this ruling the relevant exempt benefits to be considered are the exemptions for:

- 'work related counselling' under subparagraph 58M(1)(c)(iv) of the FBTAA;
- Minor benefits under section 58P of the FBTAA.

Work related counselling and section 58M of the FBTAA

30. Subparagraph 58M(1)(c) (iv) provides that a residual benefit will be an exempt benefit where it consists of the provision of 'work-related counselling' of an employee or an associate of an employee.

31. In explaining the circumstances in which the exemptions under section 58M will apply, the Explanatory Memorandum to Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987 stated in Part B:

... 'work-related counselling' is being defined under amendments proposed by clause 48 to mean, broadly, individual or group counselling (e.g., a seminar) related to matters such as safe work practices, stress management, fitness, drug or alcohol abuse or retirement problems. It is also necessary that the benefit is provided by the employer in order to improve or maintain the efficiency of employees or to prepare them for retirement and not as a form of remuneration.

32. In considering whether any of these exemptions apply to the residual benefits provided as part of the CCSP it is necessary to consider paragraph 58M(1)(c). Here through reference to subsection 136(1), 'work-related counselling' is defined as:

- (a) in relation to an employee of an employer, means counselling attended by the employee; and
- (b) in relation to an associate of an employee of an employer, means counselling attended by the associate where the associate is accompanied by the employee;

where all of the following conditions are satisfied:

- (c) the attendance of:
 - (i) if paragraph (a) applies – the employee; and
 - (ii) if paragraph (b) applies – both the employee and the associate;

at the counselling gives effect to an objective, purpose, plan or policy devised, adopted or required to be followed, by the employer to:

- (iii) improve or maintain the quality of the performance of employees' duties; or
 - (iv) prepare employees for retirement.
- (d) the counselling relates to any of the following matters:
 - (i) safety;
 - (ii) health;
 - (iii) fitness;
 - (iv) stress management;
 - (v) personal relationships;
 - (vi) retirement problems;
 - (vii) drug or alcohol abuse;
 - (viii) rehabilitation or prevention of work-related trauma or of other disease or injury;
 - (ix) first aid; or
 - (x) any similar matter.

- (e) there is no benefit that:
 - (i) is provided in respect of the employment of the employee;
 - (ii) consists of the provision of, or relates to, the counselling; and
 - (iii) is provided wholly or principally as a reward for services rendered or to be rendered by the employee.

What is counselling?

33. In understanding the meaning of this term it is helpful to refer to the ordinary dictionary meanings.

34. The *Macquarie Dictionary*¹ defines the word 'counsel' as 'advice; opinion or instruction given in directing the judgment or conduct of another'. The *Australian Concise Oxford Dictionary*² defines 'counselling' as the act or process of giving counsel' and relevantly the noun 'counsel' as 'advice, esp. formally given', and the verb as '1 ... advise (a person) 2a give advice to (a person) on social or personal problems, esp. professionally' and 'b assist or guide (a person) in resolving personal difficulties'.

35. The wording of the definitions indicates 'counselling' involves a suitably qualified person (not necessarily a legally qualified medical practitioner, nurse, dentist or optometrist) providing care to someone else in relation to their established area of expertise.

36. Although 'care' is not defined within the FBTA, 'health care' is defined in subsection 136(1) to mean 'any examination or test or form of care (whether therapeutic, preventative or rehabilitative) that is related to the physiological or psychological health of a person'. It includes the provision of drugs, vaccines or other medical preparations in connection with the care.

37. The *Macquarie Dictionary* defines the word 'care' as

4 protection charge: *under the care of a doctor.*

'Care for' is defined as:

c. to look after; make provision for.

It can be concluded therefore, that 'care' is wider than just health care and can include advice or information in the form of guidance.

¹ 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.

² 2004, 4th edn, Oxford University Press.

38. The Explanatory Memorandum (EM) to Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987 indicates the advice or information can be given either on an individual basis, or in a group situation such as a seminar. This is reflected in the definition of 'counselling' in subsection 136(1) which states that 'counselling' 'includes the giving of advice or information in a seminar'.

39. The advice or information can be in relation to a wide range of matters. For example, EM also indicates it can be related to matters such as safe work practices, stress management, fitness, drug or alcohol abuse or retirement problems. This list of examples is extended by Taxation Determination TD 93/153³ to include outplacement services such as assistance in writing a resume and job application, guidance on seeking new employment or training for employment interviews and selection tests.

40. Although the advice or information provided can be in relation to a wide range of areas a benefit will not be considered to be 'counselling' unless the provision of advice is the principal purpose for the benefit being provided to the employee. For example, although 'counselling' can include training or advice about how to undertake various physical activities, a physical activity session with limited instruction undertaken by an employee for the purpose of keeping fit will not constitute 'counselling'.

The meaning of 'relate'

41. Paragraph (d) of the definition of 'work-related counselling' in subsection 136(1) requires the counselling to 'relate' to certain specified matters. The word 'relate' is not specifically defined in the FBTAA and therefore has its ordinary meaning. *The Australian Concise Oxford Dictionary* 8 defines 'relate' to mean '...establish relation between; connected; allied'. *The Macquarie Dictionary*, 9 in so far as is relevant, defines 'relate' to mean 'to bring into or establish association, connection, or relation'. In applying these definitions the counselling will 'relate' to a listed matter if it is connected to or associated with the listed matter.

³ Taxation Determination TD 93/153, Fringe Benefits Tax: are outplacement services provided to current and former employees in the nature of work-related counselling and thus exempt from fringe benefits tax under section 58M of the *Fringe Benefits Tax Assessment Act 1986* ('the Act')?

Is any part of the CCSP exempt under section 58M as 'work-related counselling'?

(a) Initial Consultation

(i) Does an initial consultation constitute the provision of counselling?

42. The initial consultation is described by CCSP as the meeting of an individual employee with a CCSP Chiropractor to create a personalised action plan so that they can assist the employee to achieve the best they can in regards to health, safety, fitness, stress management and/or personal relationships.

43. Counselling has been interpreted as an involvement of a suitably qualified person giving advice or guidance in relation to their area of expertise. This advice and guidance can be provided in a variety of ways including consultation. Therefore, an initial consultation by a qualified chiropractor will constitute the provision of counselling.

(ii) Is the initial consultation attended by either an employee, or an employee and an associate?

44. The initial consultations are attended by employees.

(iii) Does the attendance of the employee give effect to an objective, purpose plan or policy devised, adopted or required to be followed by the employer?

45. The employers to whom this program will be offered will have an objective, purpose, plan or policy to improve or maintain the quality of performance of the employee's duties.

(iv) Does the counselling relate to a specified matter?

46. The initial consultations can cover a range of topics including health, safety, fitness, stress management and/or personal relationships. Each of these topics come within the list contained in paragraph (d) of the work related counselling definition in subsection 136(1) of the FBTA.

(v) Is the counselling provided as a reward for services?

47. The employer will not be providing the program to employees as a reward for specific achievements, or through a salary sacrifice arrangement. As such, the benefit will not be provided wholly or principally as a reward for services rendered or to be rendered by the employee.

48. Therefore an initial consultation will be an exempt benefit under subparagraph 58 (1)(c)(iv) as work related counselling.

(b) Nutritional Counselling

(i) Does nutritional counselling constitute the provision of counselling?

49. Nutritional counselling is described by CCSP as the meeting of an individual employee with a CCSP chiropractor to discuss the absorption and digestion of foods and the importance of regulating feeding to reduce obesity and increase personal health.

50. The CCSP Chiropractor may also discuss what a balanced diet is for the employee in relation to their lifestyle in order to improve their health, energy levels and wellbeing. The counselling is provided using information about the food intake and metabolism of the employee. Nutritional Counselling also provides health and fitness advice to an employee.

51. Counselling has been interpreted as an involvement of a suitably qualified person giving advice or guidance in relation to their area of expertise. This advice and guidance can be provided in a variety of ways including consultation. Therefore, nutritional counselling by a qualified chiropractor will constitute the provision of counselling.

(ii) Is the nutritional counselling consultation attended by either an employee, or an employee and an associate?

52. Nutritional counselling consultations are attended by employees.

(iii) Does the attendance of the employee give effect to an objective, purpose plan or policy devised, adopted or required to be followed by the employer?

53. The employers to whom this program will be offered will have an objective, purpose, plan or policy to improve or maintain the quality of performance of the employee's duties.

(iv) Does nutritional counselling relate to a specified matter?

54. Nutritional counselling relates to health and fitness which come within the list contained in paragraph (d) of the work related counselling definition in subsection 136(1) of the FBTAA.

(v) Is the counselling provided as a reward for services?

55. The employer will not be providing the program to employees as a reward for specific achievements, or through a salary sacrifice arrangement. As such, the benefit will not be provided wholly or principally as a reward for services rendered, or to be rendered by the employee.

56. Therefore a nutritional counselling consultation will be an exempt benefit under subparagraph 58 (1)(c)(iv) as work related counselling.

(c) Psychological Counselling

(i) Does psychological counselling constitute the provision of counselling?

57. Counselling is described by CCSP as the meeting of an individual employee with a CCSP chiropractor to counsel employees on stress and coping, illness and disability, pain and management, rehabilitation, eating behaviours and eating disorders, substance abuse, anxiety disorders, mood disorders, lifespan development disorders, referral procedures and community resources.

58. The CCSP chiropractor provides health and stress management advice to an employee.

59. Counselling has been interpreted as the involvement of a suitably qualified person giving advice or guidance in relation to their area of expertise. This advice and guidance can be provided in a variety of ways including consultation. Therefore, psychological counselling by a qualified chiropractor will constitute the provision of counselling.

(ii) Is the psychological counselling consultation attended by either an employee, or an employee and an associate?

60. The psychological counselling consultations are attended by employees.

(iii) Does the attendance of the employee give effect to an objective, purpose plan or policy devised, adopted or required to be followed by the employer?

61. The employers to whom this program will be offered will have an objective, purpose, plan or policy to improve or maintain the quality of performance of the employee's duties.

(iv) Does the counselling relate to a specified matter?

62. The psychological counselling consultations includes health and stress management which comes within the list contained in paragraph (d) of the work related counselling definition in subsection 136(1) of the FBTA.

(v) Is the counselling provided as a reward for services?

63. The employer will not be providing the program to employees as a reward for specific achievements, or through a salary sacrifice arrangement. As such, the benefit will not be provided wholly or principally as a reward for services rendered, or to be rendered by the employee.

64. Therefore psychological counselling consultations will be an exempt benefit under subparagraph 58M (1)(c)(iv) as work related counselling.

(d) Ergonomic Counselling

(i) Does ergonomic counselling constitute the provision of counselling?

65. Ergonomic counselling is described by CCSP as the meeting of an individual employee with a CCSP chiropractor based on their particular workplace environment on the best practices to prevent repetitive strain injuries. This counselling involves the recommendations of the best equipment, posture, and work environment to ensure that the employee is comfortable and productive in their workspace.

66. Counselling has been interpreted as the involvement of a suitably qualified person giving advice or guidance in relation to their area of expertise. This advice and guidance can be provided in a variety of ways including consultation. Therefore, ergonomic counselling by a qualified chiropractor will constitute the provision of counselling.

(ii) Is the ergonomic counselling consultation attended by either an employee, or an employee and an associate?

67. The ergonomic counselling consultations are attended by employees.

(iii) Does the attendance of the employee give effect to an objective, purpose plan or policy devised, adopted or required to be followed by the employer?

68. The employers to whom this program will be offered will have an objective, purpose, plan or policy to improve or maintain the quality of performance of the employee's duties.

(iv) Does the counselling relate to a specified matter?

69. The CCSP states ergonomic counselling provides safety and prevention of work-related trauma to an employee which comes within the list contained in paragraph (d) of the work related counselling definition in subsection 136(1) of the FBTAA.

(v) Is the counselling provided as a reward for services?

70. The employer will not be providing the program to employees as a reward for specific achievements, or through a salary sacrifice arrangement. As such, the benefit will not be provided wholly or principally as a reward for services rendered, or to be rendered by the employee.

71. Therefore ergonomic counselling consultations will be an exempt benefit under subparagraph 58 (1)(c)(iv) as work related counselling.

(e) Group Counselling

(i) Does group counselling constitute the provision of counselling?

72. Group counselling is conducted monthly by the CCSP. These meetings will be facilitated by a CCSP chiropractor who will provide guidance regarding health and wellbeing topics. The topics would be in conjunction with the themes identified in the weekly sessions or alternatively are dedicated to a particular group type.

73. Counselling has been interpreted as an involvement of a suitably qualified person giving advice or guidance in relation to their area of expertise. This advice and guidance can be provided in a variety of ways including group sessions. Therefore, group counselling by a qualified chiropractor will constitute the provision of counselling.

(ii) Is the group counselling session attended by either an employee, or an employee and an associate?

74. The group counselling sessions are attended by employees.

(iii) Does the attendance of the employee give effect to an objective, purpose plan or policy devised, adopted or required to be followed by the employer?

75. The employers to whom this program will be offered will have an objective, purpose, plan or policy to improve or maintain the quality of performance of the employee's duties.

(iv) Does the counselling relate to a specified matter?

76. The CCSP group counselling sessions will relate to their expertise in providing health, safety and prevention of work-related injury to an employee which comes within the list contained in paragraph (d) of the work related counselling definition in subsection 136(1) of the FBTA.

(v) Is the counselling provided as a reward for services?

77. The employer will not be providing the program to employees as a reward for specific achievements, or through a salary sacrifice arrangement. As such, the benefit will not be provided wholly or principally as a reward for services rendered, or to be rendered by the employee.

78. Therefore the group counselling sessions will be an exempt benefit under subparagraph 58 (1)(c)(iv) as work related counselling.

(f) Physical Health Counselling

(i) Does physical health counselling constitute the provision of counselling?

79. Physical Health Counselling is described by the CCSP as:

Physical Health Counselling

The employee receives counselling on how to ensure that their metabolic pathways within their bodies are functioning at the highest levels. This involves the taxpayer using basic supplementing to influence biochemical pathways to promote energy production, immunity, hormonal and detoxification pathways.

The employee is also provided with counselling regarding any of the following areas; cardiovascular, hormonal, renal and endocrine amongst others which provide them with balanced information on how to be in the best physical health.

Through diagnostic training the taxpayer is able to monitor any clinical presentation, management and prognosis of any conditions affecting the nervous system as well as any dermatology and ophthalmology conditions.

The taxpayer is knowledgeable in the patho-physiology of bones, cartilage and joints and is able to counsel the employee if there are any rheumatic disorders.

Weekly adjustments are performed on the employee to help realign and strengthen the body.

Physical Health Counselling provides health and fitness advice to an employee.

80. Physical Health Counselling offered by CCSP includes a chiropractic adjustment. A chiropractic adjustment is described by the Chiropractors Association of Australia as:

the skill of using a specific force in a precise direction, applied to a joint that is fixated, 'locked up', or not moving properly. This adds motion to the joint, helping the joints to gradually regain more normal motion and function. The purpose of this safe and natural procedure is to permit improved spinal function, improved nervous system function, and improved health.

There are many ways to adjust the spine. Usually the chiropractor's hands or a specially designed instrument delivers a brief and highly-accurate thrust. Some adjusting methods are quick, whereas others require a slow, constant or indirect pressure...

81. A fundamental difference between physical health counselling and the other counselling services offered by CCSP is the physical component of the service. Physical health counselling is performed by chiropractors who are performing physical manipulations on the employee.

82. While it is acknowledged that counselling may be a component of the consultation it is contended that the primary objective of the physical health counselling is the chiropractic adjustment.

83. Therefore physical health therapy is not considered counselling for the purposes of subparagraph 58M(1)(c)(iv).

84. As physical health therapy is not considered counselling for the purposes of subparagraph 58M(1)(c)(iv) it is also not considered an exempt benefit for the purposes of this section.

Does Physical Health Counselling constitute an exempt benefit under section 58P?

85. Section 58P provides exemption for certain 'minor benefits' that meet the requirements of that section.

86. Taxation Ruling TR 2007/12⁴ provides the following guidance regarding exemption under section 58P that has relevance to this case:

8. A minor benefit is an exempt benefit under section 58P where:

- the notional taxable value of the minor benefit is less than \$300; and
- it would be concluded that it would be unreasonable, having regard to the specified criteria in paragraph 58P(1)(f), to treat the minor benefit as a fringe benefit.

...

16. The minor benefits exemption in section 58P does not apply to benefits that are provided to an employee under a SSA.

17. Paragraph 58P(1)(e) places a threshold of 'less than \$300' on the notional taxable value of a minor benefit. This threshold test applies to each benefit provided to an individual employee, and/or each benefit provided to an associate of an employee, to which section 58P may apply. The threshold test is not an upper limit on the total value of minor benefits that any individual employee may receive.

18. The value of a minor benefit must relate to the 'current year of tax'. Where a benefit is provided over a period which covers two or more FBT years, only the benefit provided in the current year of tax is considered in determining the notional taxable value.

⁴ Taxation Ruling TR 2007/12 Fringe benefits tax: minor benefits.

19. The words 'infrequency and irregularity' and 'identical or similar' are not defined in the FBTA and therefore take on their ordinary meaning.

20. In having regard to the criteria contained in paragraph 58P(1)(f), the 'infrequency and irregularity' with which associated benefits have been or can reasonably be expected to be provided (subparagraph 58P(1)(f)(i)) is only one of the criteria that must be considered.

21. Even where identical or similar associated benefits have been provided infrequently and irregularly, it may nonetheless be concluded that it is reasonable to treat the minor benefit as a fringe benefit when consideration is given to the other specified criteria in paragraph 58P(1)(f).

22. In applying the 'infrequency and irregularity' criterion, it is not appropriate to stipulate the maximum number of times associated benefits that are identical or similar to a minor benefit, or benefits in connection with the minor benefit, can be provided before the criterion is not met. However, the more often and regularly those benefits are provided, the less likely it is that this criterion would be met.

87. As relevant here, 'notional taxable value' is defined in subsection 136(1) as referring to an amount that would be the taxable value of the benefit if it were assumed to be a fringe benefit in the year of tax.

88. It is considered that, in this case, the relevant taxable values will be the cost of the Physical Health Counselling sessions charged to the employer. Employers participating in the CCSP are charged between \$35 and \$50 (exclusive of GST) per session per employee depending on the duration of the consultation and the nature of the service being provided.

89. As the notional taxable value of each of the benefits provided by a specific Physical Health Counselling Session is below \$300 (the 'threshold test') the legislative requirements referred to in the first dot point of paragraph 8 of TR 2007/1⁵ regarding exemption under section 58P is met.

90. However, the legislative requirements referred to in the second dot point of paragraph 8 of TR 2007/12 must also be met before exemption is granted under section 58P. In that regard, paragraph 58P(1)(f) states:

- (f) having regard to:
 - (i) the infrequency and irregularity with which associated benefits, being benefits that are identical or similar to:
 - (A) the minor benefit; or
 - (B) benefits provided in connection with the provision of the minor benefit;

have been or can reasonably be expected to be provided;

- (ii) the amount that is, or might reasonably be expected to be, the sum of the notional taxable values of the minor benefit and any associated benefits, being benefits that are identical or similar to the minor benefit, in relation to the current year of tax or any other year of tax;
- (iii) the amount that is, or might reasonably be expected to be, the sum of the notional taxable values of any other associated benefits in relation to the current year of tax or any other year of tax;
- (iv) the practical difficulty for the employer in determining the notional taxable values in relation to the current year of tax of:
 - (A) if the minor benefit is not a car benefit – the minor benefit; and
 - (B) if there are any associated benefits that are not car benefits – those associated benefits; and
- (v) the circumstances surrounding the provision of the minor benefit and any associated benefits including, but without limiting the generality of the foregoing:
 - (A) whether the benefit concerned was provided to assist the employee to deal with an unexpected event; and
 - (B) whether the benefit concerned was provided otherwise than wholly or principally by way of a reward for services rendered, or to be rendered, by the employee;

it would be concluded that it would be unreasonable to treat the minor benefit as a fringe benefit in relation to the employer in relation to the current year of tax;

the minor benefit is an exempt benefit in relation to the current year of tax.

91. Subsection 58P(2) provides the meaning of what is an 'associated benefit' for the purposes of the section and states:

58P(2) [Associated benefit]

For the purposes of this section, a benefit is an associated benefit in relation to a minor benefit if, and only if:

- (a) any of the following subparagraphs applies:
 - (i) the benefit is identical or similar to the minor benefit;
 - (ii) the benefit is provided in connection with the provision of the minor benefit;
 - (iii) the benefit is identical or similar to a benefit provided in connection with the provision of the minor benefit;

- (b) the benefit and the minor benefit both relate to the same employment of a particular employee; and
- (c) the benefit is not an exempt benefit by virtue of a provision of this Act other than this section.

92. As it has been determined above that the following CCSP services are exempt under section 58M, they will not be regarded as 'associated benefits' to physical health counselling for the purposes of section 58P, due to the operation of paragraph 58P(2)(c):

- Initial Consultation;
- Nutritional Counselling;
- Psychological Counselling;
- Ergonomic Counselling; and
- Group Counselling.

93. However, each time Physical Health Counselling is provided to an employee, as they would be at least similar if not identical to each other session, for the purposes of subparagraph 58P(2)(a)(i) and paragraphs 58P(2)(b) and 58P(2)(c), they would be considered as being associated benefits to each other.

94. Nonetheless, taking into consideration that the 'infrequency and irregularity' with which associated benefits have been or can reasonably be expected to be provided is only one of the criteria that must be considered for the purposes of paragraph 58P(1)(f). By applying the 'infrequency and irregularity' criterion it is not appropriate to stipulate the maximum number of times that associated benefits can be provided before the criterion is not met.

95. In terms of the remaining criteria to be considered within paragraph 58P(1)(f), it is considered that based on the information provided that it would be unreasonable to treat the provision of the Physical Health Counselling as a fringe benefit.

Conclusion on whether Physical Health Counselling constitutes an exempt benefit under Section 58P?

96. As determined previously at paragraph 89, Physical Health Counselling sessions meet the threshold test of section 58P.

97. As has also been determined at paragraph 95, it is considered that it would be unreasonable to treat the provision of Physical Health Counselling as a fringe benefit.

98. Therefore, it is considered that the provision of Physical Health Counselling will be exempt as a minor benefit as the requirements of section 58P are met.

Appendix 2 – Detailed contents list

99. The following is a detailed contents list for this Ruling:

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	8
Scheme	9
Ruling	17
Appendix 1 – Explanation	24
What type of benefits do employees participating in the CCSP receive?	24
<i>Do employees participating in the CCSP receive exempt benefits</i>	29
Work related counselling and section 58M of the FBTAA	30
<i>What is counselling?</i>	33
The meaning of relate	41
<i>Is any part of the CCSP exempt under section 58M as 'work-related counselling'?</i>	42
<i>(a) Initial Consultation</i>	42
<u>(i) Does an initial consultation constitute the provision of counselling?</u>	42
<u>(ii) Is the initial consultation attended by either an employee, or an employee and an associate?</u>	44
<u>(iii) Does the attendance of the employee give effect to an objective, purpose plan or policy devised, adopted or required to be followed by the employer?</u>	45
<u>(iv) Does the counselling relate to a specified matter?</u>	46
<u>(v) Is the counselling provided as a reward for services?</u>	47
<i>(b) Nutritional Counselling</i>	49
<u>(i) Does nutritional counselling constitute the provision of counselling?</u>	49
<u>(ii) Is the nutritional counselling consultation attended by either an employee, or an employee and an associate?</u>	52

<u>(iii) Does the attendance of the employee give effect to an objective, purpose plan or policy devised, adopted or required to be followed by the employer?</u>	53
<u>(iv) Does nutritional counselling relate to a specified matter?</u>	54
<u>(iv) Does nutritional counselling relate to a specified matter?</u>	54
<u>(v) Is the counselling provided as a reward for services?</u>	55
<i>(c) Psychological Counselling</i>	57
<u>(i) Does psychological counselling constitute the provision of counselling?</u>	57
<u>(ii) Is the psychological counselling consultation attended by either an employee, or an employee and an associate?</u>	60
<u>(iii) Does the attendance of the employee give effect to an objective, purpose plan or policy devised, adopted or required to be followed by the employer?</u>	61
<u>(iv) Does the counselling relate to a specified matter?</u>	62
<u>(v) Is the counselling provided as a reward for services?</u>	63
<i>(d) Ergonomic Counselling</i>	65
<u>(i) Does ergonomic counselling constitute the provision of counselling?</u>	65
<u>(ii) Is the ergonomic counselling consultation attended by either an employee, or an employee and an associate?</u>	67
<u>(iii) Does the attendance of the employee give effect to an objective, purpose plan or policy devised, adopted or required to be followed by the employer?</u>	68
<u>(iv) Does the counselling relate to a specified matter?</u>	69
<u>(v) Is the counselling provided as a reward for services?</u>	70
<i>(e) Group Counselling</i>	72
<u>(i) Does group counselling constitute the provision of counselling?</u>	72
<u>(ii) Is the group counselling session attended by either an employee, or an employee and an associate?</u>	74
<u>(iii) Does the attendance of the employee give effect to an objective, purpose plan or policy devised, adopted or required to be followed by the employer?</u>	75
<u>(iv) Does the counselling relate to a specified matter?</u>	76
<u>(v) Is the counselling provided as a reward for services?</u>	77
<i>(f) Physical Health Counselling</i>	79

<u>(i) Does physical health counselling constitute the provision of counselling?</u>	79
Does Physical Health Counselling constitute an exempt benefit under Section 58P?	85
Conclusion on whether Physical Health Counselling constitutes an Exempt benefit under Section 58P?	96
Appendix 2 – Detailed contents list	99

References

Previous draft:

Not previously issued as a draft

- FBTA 1986 136(1)
- Copyright Act 1968

Related Rulings/Determinations:

TD 93/153; TR 2006/10,
TR 2007/12,

Other references:

- Explanatory Memorandum to Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987
- The Australian Concise Oxford Dictionary 2004, 4th edn Oxford University Press
- The Macquarie Dictionary 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW

Subject references:

- exempt fringe benefits
- minor benefits
- work related counselling

Legislative references:

- FBTA 1986 58M
 - FBTA 1986 58P
-

ATO references

NO: 1-3LXUWV

ISSN: 1445-2014

ATOlaw topic: Fringe Benefits Tax ~~ Miscellaneous exempt benefits